UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

The Finley Hospital,	SEIU Local 199
	Case No. 33-CA-14942
Respondent,	33-CA-15132
	33-CA-15192
and	33-CA-15193
SEIU Local 199,	RESISTANCE TO
	RESPONDENT'S
	RECUSAL MOTION
Charging Party.	

ARGUMENT

A. Respondent's Claims are Baseless as Member Becker Has Not Been Employed by Local 199 Nor Has He Advised Local 199 on Matters Pertaining to the Respondent.

The Respondent alleges Member Becker's involvement with Local 199 and Finley Hospital disqualifies him from passing judgment in this matter. Local 199 President Cathy Glasson has provided an affidavit which states: a) Craig Becker has never been retained as counsel to Local 199; b) staff assistance provided by the International Union to Local 199 has not come from the International Union's Legal Department; c) the International Union has never been a party to any collective bargaining agreement with Respondent; d) no employee of the International Union claimed to have the ability or willingness to not approve or void any collective bargaining agreement between Local 199 and Respondent; e) the International Union has not provided any financial assistance to Local 199 for the purpose of paying legal expenses.

The chief problem with Respondent's argument is the lack of any involvement by Member Becker on behalf of Local 199 in regard to Finley Hospital. Becker has never been employed by Local 199. Becker has never provided any legal advice to Local 199 on any matter pertaining to Finley Hospital. Furthermore, no attorney employed by the Legal Department of the SEIU International Office has advised Local 199 on any matter pertaining to Finley Hospital. Even if the Legal Department of SEIU could be analogized to a law firm for the purpose of identifying attorney conflicts of interest, there would be none in this situation. Accordingly, while the federal statute cited by Respondent would disqualify an attorney in private practice who "served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter...," that statute is not relevant in the present factual situation.

Respondent also cites a federal statute stating that a "judge, justice, or magistrate... shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. In lieu of making a legal argument, Respondent then asserts that Member Becker's impartiality is "clearly" in question. Respondent's assertion is supported by fabrication, instead of fact, and irrelevant information. Respondent interestingly claims to have knowledge of the attorney-client relationship which it alleges existed between Member Becker, Local 199 and counsel for Local 199. It is unclear how Respondent could purport to know that a relationship existed, which did not, in fact, exist, much less claim to know anything about the nature of the representation. Similarly, Respondent claims to understand the manner in which the International Union supposedly supports Local 199's legal costs, but again makes an assertion that has no basis in fact. Even if the International Union had provided financial assistance to Local 199 earmarked for legal expenses, which it did not, the International Union would still

not properly be considered to be a part of the attorney-client relationship which exists between Local 199 and its legal counsel. Respondent also cites numerous cases in which Member Becker acted as legal counsel and to which Local 199 was not a party, cases which are plainly irrelevant to the current matter.

B. The Executive Order Does Not Mandate Member Becker's Recusal.

The executive order cited by Respondent requires all appointees to refrain from participating in any particular matter involving specific parties "that is directly and substantially related" to the appointee's former employment for a period of two years. Also, Respondent cites specific testimony from Member Becker in which he indicated that for two years he will not participate in any "matter involving specific parties that is directly and substantially related to a former client... including SEIU. Once again, instead of making a legal argument Respondent chooses to assert that Local 199 is "directly and substantially" related to the International Union without defining the term or otherwise demonstrating it is applicable in this situation. Curiously, Respondent highlights the fact – by utilizing bold font – that "other" employees of the International Union who are not Craig Becker have provided periodic assistance to Local 199 in bargaining.

As Member Becker has not taken on representation on behalf of Local 199 in the two years since President Obama appointed him to the National Labor Relations Board, Executive Order No. 13490 does not require his recusal in this matter.

C. If Member Becker Must Recuse Himself From This Matter, He Must Recuse Himself From Virtually Every Matter Before the Board.

The standard which Respondent seeks with regard to recusal from a matter before the National Labor Relations Board is staggeringly overbroad. Respondent believes that recusal is necessary not just when a specific party is before the Board that has previously been represented by the member in question, but also when the member has previously represented an organization affiliated with the specific party before the Board. Accordingly, in Respondent's view, Member Becker could not take part in any matter involving any local labor union which is affiliated with SEIU, Member Becker's previous employer and client. Also, Member Becker could not take part in any matter involving any local labor union which is affiliated with AFL-CIO, Member Becker's previous employer and client.

In other words, the standard which Respondent seeks is one which is patently overbroad and absurd on its face. When Congress created the National Labor Relations Board, it must have envisioned and endorsed the notion that Board members would have some degree of expertise and experience in the field of labor law. Yet Respondent would seek to disqualify any individual who has worked for any labor organization with any affiliation to the party at hand. To vertically imply a conflict of interest in this matter is not required by federal law, federal executive order or any authority cited by Respondent; it succeeds in only one thing; denuding the Board of qualified members.

CONCLUSION

Respondent simply fails to recognize, or chooses not to recognize, that Local 199 and SEIU are two different organizations. Local 199 is an affiliate of the International Union, not a subsidiary or a client; it periodically receives financial assistance and assistance from International staff to aid in the bargaining process. Local 199 elects its

own officers, hires its own attorneys, bargains its own contracts, ratifies its own contracts, and carries out all other duties that go into operating a labor organization. It does all of these things independently, without needing or seeking sanction from the International Union for its actions.

Respondent has presented only untruths, irrelevant information, and assertions unsupported by legal analysis. Thus, Local 199 sees no reason for Member Becker to recuse himself from the present matter.

Respectfully Submitted,

NATHAN WILLEMS AT0009260

SOLE, McMANUS & WILLEMS PC

118 Third Avenue SE, Suite 830

Cedar Rapids, IA 52401-1440

(319) 366-4313 fax: (319) 366-0368 ATTORNEY FOR BARGAINING UNIT

REPRESENTATIVE

I certify that I mailed/mana delivered/sent by fax a copy of the foregoing document to which this certificate is attached to the parties or their attorneys of record on this day of hay 20 ().

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

The Finley Hospital,

Respondent,

Respondent,

SEIU Local 199
Case No. 33-CA-14942
33-CA-15132
33-CA-15192
and

SEIU Local 199,

AFFIDAVIT OF
CATHY GLASSON
Charging Party.

I, Cathy Glasson, state under oath as follows:

- I am elected as the President of SEIU Local 199, a labor organization which, among others, represents a bargaining unit of nurses at Finley Hospital. I have been the President the entire time that Local 199 has been the certified representative of this bargaining unit.
- As President of SEIU Local 199, my duties include hiring and directing legal counsel, hiring and directing the staff of Local 199, and directing the use of staff made available by the SEIU International Office to assist Local 199.
- 3. At no time did Local 199 retain the services of Craig Becker to act as legal counsel. At no time did SEIU's International Office offer the services of Craig Becker to assist Local 199. Any allegation to the contrary is untrue.
- 4. The SEIU International Office did make Denise Polyac available to assist Local 199 in bargaining in January, 2007. Ms. Polyac's role with Local 199 was limited to assisting Local 199 with bargaining, she has never represented Local 199 as legal counsel.
- 5. To my knowledge, at all times that I have known Denise Polyac, she has been employed as an International Representative of the Health Care Division of SEIU.

I have never known her to work as an attorney in the Legal Department of SEIU.

To my knowledge, Craig Becker has been employed as an attorney by the Legal

Department of SEIU. I have never known him to be employed by the Health Care

Division of SEIU.

- 6. All collective bargaining agreements with Finley Hospital have been negotiated between the Hospital and SEIU Local 199. The International Union has never been a party to any of the collective bargaining agreements.
- 7. I sat in on every negotiation session between Local 199 and Finley Hospital from June, 2006, to December, 2007. At no time did any individual employed by the International Union claim that the International would not approve a collective bargaining agreement unless certain contractual conditions were met. Any allegation to the contrary is untrue.
- 8. The International Union does not, and has not, approved Local 199's collective bargaining agreements with Finley Hospital. The only approval or ratification required is from Local 199 members who are a part of the bargaining unit at Finley Hospital. Any allegation to the contrary is untrue.
- 9. Local 199 has paid for all of its own legal counsel and litigation expenses. If the International Union has some practice of "pooling litigation expenses," Local 199 has not been a beneficiary. Though Local 199 has received financial assistance from the International Union, none of the assistance has been earmarked for legal counsel or litigation expenses. Any allegation to the contrary is untrue.

Outh Slesson
Cathy Glasson

Subscribed and sworn to before me this 4th day of May, 2010, by Cathy Glasson.

plary Public, State of Iowa



RECEIVED

2010 MAY -5 PM 2: 46

NLRB ORDER SECTION 1